

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

REGINALD GLASGOW,

Defendant-Appellant.

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UNPUBLISHED  
February 25, 2003

No. 236316  
Wayne Circuit Court  
LC No. 98-005303

Before: Whitbeck, C.J., and Griffin and Owens, JJ.

PER CURIAM.

Following a bench trial, the trial court convicted defendant Reginald Glasgow of possession with intent to deliver less than fifty grams of heroin<sup>1</sup> and possession of a firearm during the commission of a felony.<sup>2</sup> The trial court sentenced Glasgow to one to twenty years' imprisonment for the drug conviction and a consecutive two-year prison term for the felony-firearm conviction. Glasgow appeals as of right. We affirm.

I. Basic Facts And Procedural History

Detroit police narcotics officers raided an upper flat pursuant to a search warrant. The street-level door to the flat's stairway was open, but at the top of the stairs the police had to break through a locked security door. As they entered the flat, two officers saw Glasgow running from the dining room to the living room. Glasgow ran down the back steps, but was caught in the lower flat. No other persons were present in the upper flat.

When the police arrested Glasgow, he had two keys. One operated the lock of the front street-level door, and the other operated a padlock that secured the upstairs door. The police confiscated \$388 in cash from Glasgow and found empty plastic baggies "throughout" the upper flat. The police also found a loaded shotgun and a leather pouch on the floor in the dining room. Inside the pouch, the police found a "day planner" calendar book inscribed "if found please return to Reginald B. Glasgow" with an address in Southfield, which was not the upper flat that the police searched in Detroit. Also in the pouch were two plastic baggies containing a total of

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<sup>1</sup> MCL 333.7401(2)(a)(iv).

<sup>2</sup> MCL 750.227b.

thirty-five foil packets of heroin. The police found no drugs or firearms on Glasgow himself and confiscated no mail with his name.

When arrested, Glasgow made no statements to the arresting officers. Glasgow later waived his right to silence and acknowledged in a statement to the police that he knew heroin and a shotgun were present in the flat. Nevertheless, he maintained that he did not sell drugs from the house, that a woman did so, and that he was only watching television while waiting for her to arrive.

On the first day of trial, Glasgow asked to substitute an attorney he had just recently retained for his appointed counsel. Glasgow did not identify his reason for seeking to substitute counsel, and he did not express any dissatisfaction with his appointed attorney. The trial court denied Glasgow's motion, indicating that the matter was going to proceed to trial as scheduled and "for an attorney to step in on the date of trial and attempt to defend this man would be malpractice." Because Glasgow had waived his right to a trial by jury, trial began with the trial court sitting as the trier-of-fact. The trial court read the information and the first witness was called to testify. Before the witness could testify, however, Glasgow announced that he wished to plead guilty pursuant to a plea agreement that the prosecutor had offered earlier. Glasgow expressed trepidation about his choice, so the trial court allowed him time to speak with his attorney and briefly adjourned the proceedings. When the trial resumed five minutes later, defense counsel appeared without Glasgow. Defense counsel stated that she told Glasgow that he would need to come into the courtroom to put his plea on the record, and he asked for a "moment" to compose himself. When defense counsel returned to the hallway to get Glasgow, he was missing. The trial court ruled, over defense objections, that the trial would proceed despite Glasgow's absence.

The trial court found that Glasgow had constructive possession of the heroin and the shotgun, and therefore found him guilty of both counts.

## II. Glasgow's Absence from Trial

### A. Standard Of Review

Glasgow argues that the trial court violated his state and federal rights to be present for trial, to assist in his defense, to testify, and to confront his accusers when the court proceeded with trial while he was not present. These are constitutional issues subject to review de novo.<sup>3</sup>

### B. Voluntary Absence

A criminal defendant has the "the fundamental right to be present at every stage of trial where his substantial rights may be affected . . . ."<sup>4</sup> However, when a defendant voluntarily absents himself after trial has begun, the court's decision to proceed with trial does not violate

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<sup>3</sup> *People v Gilmore*, 222 Mich App 442, 459; 564 NW2d 158 (1997).

<sup>4</sup> *People v King*, 210 Mich App 425, 432; 534 NW2d 534 (1995).

the defendant's rights.<sup>5</sup> In fact, "[a] defendant's voluntary absence from the courtroom after trial has begun waives his right to be present and does not preclude the trial judge from proceeding with the trial to conclusion."<sup>6</sup> As Justice Brennan once put it, "[T]here can be no doubt whatever that the governmental prerogative to proceed with a trial may not be defeated by conduct of the accused that prevents the trial from going forward."<sup>7</sup>

Despite this black letter law, Glasgow argues that the prosecutor had to show that he was specifically aware of his right to a trial and that he intentionally abandoned that right. While this sort of scrutiny does ordinarily apply to a defendant's technical waiver of a right, it applies only when a defendant fails to appear for the *beginning* of trial.<sup>8</sup> Further, to paraphrase the United States Supreme Court, we find it incredible that Glasgow, who appeared at the beginning of trial, could maintain that he did not know he had a right to attend as an excuse for his flight from trial. Therefore, with no evidence in the record contradicting the voluntary nature of Glasgow's absence from trial, the trial court did not err when it proceeded without him.

### III. Sufficiency of the Evidence

#### A. Standard Of Review

Glasgow argues that the evidence was insufficient to convict him because it showed that he was "merely present" in an acquaintance's home while drugs and a shotgun were present. We apply review de novo to this issue.<sup>9</sup>

#### B. Constructive Possession

In *People v Jolly*,<sup>10</sup> this Court explained the legal framework for analyzing the sufficiency of evidence:

Working from the premise that an accused is innocent until proven guilty, it is the prosecution's burden in a criminal case to prove beyond a reasonable doubt the essential elements of a crime. As a threshold inquiry, the prosecutor must offer enough evidence for a court to conclude that a rational trier of fact could find that the essential elements of the crime have been established.

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<sup>5</sup> See *Taylor v United States*, 414 US 17, 19-20; 94 S Ct 194; 38 L Ed 2d 174 (1973).

<sup>6</sup> *People v Swan*, 394 Mich 451, 452; 231 NW2d 651 (1975).

<sup>7</sup> *Illinois v Allen*, 397 US 337, 349; 90 S Ct 1057; 25 L Ed 2d 353 (1970) (Brennan, J., concurring).

<sup>8</sup> See, generally, *People v Williams*, 196 Mich App 404, 407; 493 NW2d 277 (1992) (applying waiver analysis when defendant had never appeared at trial); compare *People v Gross*, 118 Mich App 161, 163-165; 324 NW2d 557 (1982) (not using waiver analysis for defendant's absence in the middle of trial after defendant had previously appeared).

<sup>9</sup> *People v Herndon*, 246 Mich App 371, 415; 633 NW2d 376 (2001).

<sup>10</sup> *People v Jolly*, 442 Mich 458, 465-466; 502 NW2d 177 (1993) (citations omitted).

Circumstantial evidence and reasonable inferences drawn therefrom may be sufficient to prove the elements of a crime.

Glasgow argues that the prosecution did not show constructive possession, which requires knowledge of the substance's presence and the right to exercise control over it.<sup>11</sup> We disagree. Glasgow was the only person in the flat. He fled the dining room when the police arrived. On the dining room floor, the police found a loaded shotgun next to the pouch containing the heroin and Glasgow's day planner. The proximity of the heroin to the day planner is more than sufficient to tie Glasgow to the heroin. The proximity of the shotgun to the pouch and its presence in plain view on the floor of the room where Glasgow was alone, and from which he fled, is more than sufficient to connect him to the shotgun as well. Thus, the trial court did not err in finding sufficient evidence to convict him.

#### IV. Prosecutorial Misconduct

##### A. Standard Of Review

Glasgow argues that the prosecutor committed misconduct by eliciting testimony that he did not make any custodial statements to the police. Because Glasgow did not object to this testimony, he must demonstrate plain error affecting his substantial rights.<sup>12</sup>

##### B. Right To Remain Silent

The United States Constitution<sup>13</sup> and Michigan's 1963 Constitution<sup>14</sup> both provide individuals the right to remain silent to avoid being compelled to serve as a witness against themselves. Because of this right, prosecutors are not allowed to comment on a defendant's decision to assert his right to remain silent, except for limited impeachment purposes.<sup>15</sup> As stated simply and often, "[W]hen a defendant chooses to exercise his right to remain silent, that silence may not be used against him at trial."<sup>16</sup>

Glasgow argues that the prosecutor violated this prohibition when, at trial, two police officers testified that Glasgow did not say anything to them after he was arrested. Assuming, without deciding that error occurred, there is no evidence that the trial court, sitting as trier-of-fact, relied in any way on this testimony to support a finding of guilt or to denigrate Glasgow's rights.<sup>17</sup> Moreover, Glasgow waived his right to remain silent and gave a statement at the police station. Accordingly, even if the two police officers' testimony was inappropriate, Glasgow cannot show

<sup>11</sup> See *People v Wolfe*, 440 Mich 508, 520; 489 NW2d 748 (1992), modified 441 Mich 1201 (1992).

<sup>12</sup> See *People v Carines*, 460 Mich 750, 763-764; 597 NW2d 130 (1999).

<sup>13</sup> US Const, Am V.

<sup>14</sup> Const 1963, art 1, § 17.

<sup>15</sup> See *People v Bobo*, 390 Mich 355, 358-362; 212 NW2d 190 (1973).

<sup>16</sup> *People v Avant*, 235 Mich App 499, 509; 597 NW2d 864 (1999).

<sup>17</sup> See *id.* at 305.

prejudice. Glasgow has failed to demonstrate plain error. Without any plain error concerning this testimony, we need not address Glasgow's related argument that his trial attorney was ineffective for failing to object to the officer's testimony.

## V. Request to Retain Counsel

### A. Standard Of Review

Glasgow argues that the trial court erred when it denied his request to substitute a newly retained attorney for his appointed counsel on the day of trial. We review a decision to allow or disallow substitution for an abuse of discretion.<sup>18</sup>

### B. Substitution

MCR 2.117(C)(2) provides that substitution of attorneys is permitted only with court approval. In *People v Stinson*,<sup>19</sup> the trial court denied the defendant's motion to adjourn trial to enable him to retain counsel as a substitute for court-appointed counsel. Specifically, on the day of trial, the defendant asked the court to adjourn his trial for one week so his family could speak with another attorney with the intention of retaining private counsel.<sup>20</sup> This Court upheld the trial court's denial of defendant's motion to adjourn, stating:

While reaffirming every defendant's right to counsel, we cannot find that this right has been denied the defendant before us. Defendant had three months in which to retain counsel. There is no showing that he had attempted to avail himself of this opportunity. The defendant, at the time of trial, sought adjournment to allow his mother time to hire an attorney. There was no showing at any time that his mother was prepared to do so, or that she had, in fact, hired an attorney. No attorney (other than his court-appointed attorney) communicated with the court in any manner to convey to the court that he was ready to undertake the defendant's cause. No other attorney's name was ever mentioned. The defendant said he was unable to see his people as he was in jail for two weeks. However, there is no showing that he attempted in any way to communicate with them or with the court, or that "seeing his people" would have produced the result of retained counsel in his behalf. Further, there was no showing that his family was barred from seeing him.<sup>[21]</sup>

In effect, *Stinson* stands for the proposition that a trial court need not automatically accommodate a last-minute request to retain counsel if (a) the defendant had ample earlier opportunities to retain counsel, (b) retaining new counsel will delay the proceedings, and (c) the defendant had not yet identified who would act as counsel. While we disagree with the trial

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<sup>18</sup> *In re Withdrawal of Attorney*, 234 Mich App 421, 431; 594 NW2d 514 (1999).

<sup>19</sup> *People v Stinson*, 6 Mich App 648; 150 NW2d 171 (1967).

<sup>20</sup> *Id.* at 653.

<sup>21</sup> *Id.* at 654.

court's statement in this case that an attorney who substitutes into a case on the day of trial has automatically committed malpractice, the factors relevant in *Stinson* are also relevant in this case. Glasgow had nearly ten months between the appointment of assigned counsel on April 26, 1998, and his trial-day request on February 17, 1999. The trial court was faced with a last-minute request based merely on hope or desire to find new counsel, which would delay trial. Under the circumstances, we conclude that the trial court did not abuse its discretion by denying Glasgow's motion.

Affirmed.

/s/ William C. Whitbeck  
/s/ Richard Allen Griffin  
/s/ Donald S. Owens